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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,365	08/14/2006	Eros Bettini	4284-0109PUS1	6012
2292 7590 06/07/2010 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
WEINSTEIN, STEVEN L				
ART UNIT		PAPER NUMBER		
1782				
NOTIFICATION DATE		DELIVERY MODE		
06/07/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/589,365

Applicant(s)

BETTINI ET AL.

Examiner

Steven L. Weinstein

Art Unit

1782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claims 12,15 and 16 are rejected under 35USC112, 2nd para. as being indefinite.

Claims 12,15, and 16 lack antecedent basis in the words/phrases "the bottom wall" (claims 12 and 15), and "the body" (claim 16).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11,12,13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Planet (WO 00/41936).

In regard to claim 11, Planet discloses a container comprising a sidewall having a top end and a bottom end, the sidewall tapering outwardly as it extends from the top end to the bottom end, a protrusion formed at the bottom end (e.g., fig. 7), the protrusion extending about the bottom end and forming an outwardly extending shoulder, a lid or closure (#5) (i.e., the recited "bottom") sealing the bottom end of the sidewall, the lid or closure separately formed from the sidewall and having an outermost free edge, wherein the lid or closure fits within the protrusion and the outermost free edge contacts an inner surface of the sidewall. This is all that claim 11 positively recites. In regard to claim 12, Planet discloses that the lid or closure can be heat sealed (i.e., "thermosoudé"). In regard to claim 13, Planet discloses a closure (e.g., #3 in fig. 7) at the top end of the sidewall. In regard to claim 15, Planet discloses that the lid or cover is planar as evidenced by fig. 7.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planet ('936) in view of Valyi ('617) and Fox ('930).

Claims 14 and 16 respectively recite that the container closure comprises a pre-punched tab and the body is a truncated pyramid or cone. The particular conventional closure and the particular conventional shape one chooses to employ are seen to have been an obvious matter of choice and/or design. In any case, both Valyi and Fox, as noted previously, teach the conventionality of closures comprising a pre-punched tab and container bodies that are truncated pyramids or cones. Planet himself discloses even discloses other container body shapes including pyramid shapes ("pyramidales"). To modify Planet and substitute one conventional closure structure for another and one conventional shape for another would therefore have been obvious.

All of applicants remarks filed 3/3/10 have been fully and carefully considered but are seen to be moot in view of the new ground of rejection, necessitated by the amendment filed 3/3/10. It is noted that to provide a container containing either an upper opening or a lower opening with an outwardly projecting protrusion in the sidewall so that an inner ledge or surface is formed in the sidewall which then receives a lid to seal off the opening is notoriously conventional in the art. For example, Fox ('930) shows this expedient at the upper opening (e.g., Fig. 3); Hartman ('378) at the bottom opening (e.g., fig. 1); Porter ('157) at the bottom opening (fig. 1); Duboc ('352) at the

bottom opening (e.g., fig. 1), Nakazato et al ('266) at the bottom opening (e.g., fig 10); and Ketting ('231) at the bottom opening (e.g., fig. 7).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1782